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Subcommittee on Regulatory Affairs
The Impact of Regulation on U.S. Manufacturing: Spotlight on the Environmental Protection Agency
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Good morning, Madam Chairman and members of the committee. I am John Wagner, Corporate Director of Environmental Affairs for Mueller Industries, Inc. Mueller is headquartered in Memphis, Tennessee, and operates 24manufacturing and distribution facilities in the United States, employing 3400 Americans and producing copper, brass, and aluminum products. One of our major facilities is Mueller Brass located in Port Huron, Michigan, in the 10th congressional district, where I grew up and still reside to this day, and maintain my office. Our Port Huron plant employs over 500 people. I am also the Chairman of the Environmental Committee of the Copper and Brass Fabricators Council ("Council"). The Council's twenty member companies are listed in Attachment 1. Thank you for inviting us to appear before the Committee today. Mueller and the Council appreciate the Committee's review of the Office of Management and Budget's Office of Information and Regulatory Affairs' (OIRA) initiative on unnecessary regulations burdening manufacturers.

The Council's member companies collectively account for between 80 percent and 85 percent of the total U.S. production of all copper and copper-alloy products, including plate, sheet, strip, foil, rod, bar, pipe, and tube. Examples of the wide range of important uses to which our semi-fabricated products are put to use include the production of electrical connectors for automobiles and computers, ammunition components, marine hardware, forgings and machined parts of all kinds, tubes for piping systems, bushings, bearings, gears, building hardware, copper plumbing tube and fittings, plumbing, heating, air-conditioning and refrigeration components, aircraft parts, valve bodies and components, rivets and bolts, heat exchanger and power utility condenser tubing, communications systems, welding rod, optical goods, keys and locks, and lead frames for semiconductor devices and the US military.

The costs of regulatory compliance on manufacturers in the U.S. are, by any reasonable estimate, an enormous burden. Specifically, in a 2003 study of the costs of regulatory compliance on manufacturing prepared for the Manufacturing Institute of the National Association of Manufacturers (NAM), The Manufacturing Alliance (Alliance) estimated that the total burden of environmental, economic, workplace, and tax compliance on the economy is in the order of $850 billion with $160 billion falling on

manufacturing alone.[1] The Alliance estimated that this burden was the equivalent of a 12 percent excise tax on manufacturing production, and that it had increased in real terms by 15% over the previous five years. At the same time, a qualitative review of international regulatory reform efforts revealed that most of the United States' trading partners had undertaken aggressive regulatory reform efforts focusing partly on general regulatory streamlining. The net result is, as the Manufacturing Alliance artfully stated, "[c]ompliance costs for regulations can be regarded as the 'silent killer' of manufacturing competitiveness." With our trading partners aggressively pursuing regulatory reforms, the anti-competitive effects of regulations on manufacturing could only worsen without an equally aggressive look at our own regulatory burden.

Against this backdrop, Mueller and the Council supported and welcomed the passage into law the Regulatory Right-to-Know Act in 2001 (RRKA). In March of 2002, the Office of Management and Budget, responding to RRKA requirements, published in the Federal Register its first "Draft Report to Congress on the Costs and Benefits of Federal Regulations." As required, the OMB called for public nominations of "…regulatory reforms to specific regulations that, if adopted, would increase overall net benefits to the public…." Mueller and the Council enthusiastically responded to this call for nominations by submitting a list of seven regulations that it deemed to be costly with little or no benefit. All seven regulations were either environmental or workplace safety measures. The Council provided specific recommendations for changes that would reduce the burden or increase the benefit of the regulations with no loss of environmental protection or worker safety.

In its 2003 report to Congress, the OMB reviewed its procedure for handling the nominations that had been received in response to its 2002 request. From 1700 nominating entities, OMB received a total of 316 distinct reform nominations. The OMB vetted the nominations and arrived at a list of 161 rules or guidance documents to submit to the agencies for review. The Council was heartened that five of its seven nominations were apparently referred to agencies (EPA and OSHA) for review. The agencies were required to respond to the nominations in one of four ways: 1. Regulations already under review or already revised. 2. New regulations that the agency will work on. 3. New regulations on which the agency is undecided. 4. New regulations that the agency deems low priority or unnecessary. Of the five Council nominations referred to agencies by the OMB, one was deemed by the agency (EPA) to be worthy of action, and two were cast into the undecided category requiring further study. The remaining two were "reforms that the agency decided not to pursue." The Council appreciates the time and consideration that OMB and the agencies devoted to its nominations. Further, the Council was encouraged that three of the nominations were targeted for reform or additional study. However, we are disappointed that none of the regulations, even those deemed worthy of action, have been changed in any way.

[1] The National Association of Manufacturers and the Manufacturers Alliance, "How Structural costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness," by Jeremy A. Leonard, December, 2003.

In a review of the reform process before Chairman Manzullo's House Small Business Committee last year, the Council expressed its opinion on the shortcomings of the process. We noted that the method used by OMB and it's Office of Information and Regulatory Affairs (OIRA) during the initial screening process was unknown, and there was no opportunity for input and clarification during this process.

- Once referred to agencies, there was no opportunity for the nominating entity to answer questions that may arise, or to clarify misunderstandings about the proposed reforms.
- There was no explanation for the agency decisions, especially when the decision is NOT to pursue.
- The agencies appear to be able to make any decision regarding referred regulations without justifying that decision, or even explaining how they arrived at it.

We asked for greater transparency in the screening process, some explanations by the agencies in support of their decisions, and a requirement that agencies justify a decision not to consider a proposed reform. Further, we asked for better communications between the nominating entity, OIRA and the agency after the regulation is referred to the agency. I am taking the time to review the procedures used to respond to the 2002 nominations and various recommendations to improve the process because I think the agencies and OMB/OIRA made major improvements in the second round of nominations in 2004 that are the subject of this hearing.

Even though we didn't get any changes as a result of the 2002 nominations, we continued to believe the process had the potential for illuminating regulatory provisions that create burdens with little or no gains, especially those that are inefficient in their requirements, or those that are no longer necessary. We therefore welcomed the February 20, 2004, Federal Register notice that OMB would once again seek public nominations of regulations in need of reform to fulfill the requirements of the RRKA. The Council especially appreciated that the OMB sought nominations of regulations affecting manufacturing in particular, and we submitted eight regulations for consideration. These nominations included six regulations from 2002 that were re-submitted, and two new regulations.

In March of 2005, in its report "Regulatory Reform of the U.S. Manufacturing Sector," OIRA announced that they had received 189 distinct reform nominations from 41 commenters. Following review by the agencies and discussion with OMB/OIRA, it was agreed that 76 of the 189 nominations had potential merit and justified further action. Seven of our nominations made this final cut to 76. All of these recommendations are awaiting action by the EPA (6) or Labor/OSHA (1). We are happy to report, Madam Chairman, that the communication among the agencies, OMB/OIRA, and the nominating parties have been vastly improved during this second nominating process. We have had direct or indirect communications and substantive meetings with the EPA on three of our recommendations. These include:

- **Definition of Volatile Organic Compounds**. The current EPA definition contains no 'volatility' element and thus disregards whether the chemical is volatile at all. All the definition currently requires is that the chemical be photochemically reactive. Rather than list those chemicals, EPA has chosen to specifically liste those not photochemically reactive. This approach presumes all other organic compounds are reactive. Thus, bowling balls, ivory soap, and sawdust if emitted into the air meet this backwards definition until listed for exemption. We asked that a vapor pressure component be added to the definition. This seems like common sense and in fact the State of Michigan had such a definition until last year when EPA made them remove it to be in line with the Federal rule. The practical effect of this would be to clarify what emission will be treated as a VOC and what is not. Thus allowing manufacturing to more accurately plan for the costs of control equipment or not. Uncertainty is a killer for manufacturing and this would remove the uncertainty.. We have had indirect contact with the agency through OIRA with suggested solutions. The EPA committed to publishing an Advanced Notice of Proposed Rulemaking by May of 2005. They did not meet this date. However, we have had messages from OMB indicating that they are considering means to achieve our objective. At least we can say that our position is being given consideration by those who have the authority to make changes.

- **POTW Removal Credits** –Council and member companies have had two meetings with the EPA and a POTW to explain the problem. EPA has provisions to grant Removal Credits to industrial dischargers when the local POTW has the capability of removing the same pollutant. Thus allowing their industrial customers to discontinue unnecessary and redundant treatment. Without Removal Credits effectively available this is an unnecessary duplication; the water gets treated twice to remove the same pollutants. The EPA committed to developing an internal issue paper on options to facilitate use of removal credits by March 2005. Again they missed the deadline, but we have recently received communications from your committee staff that EPA has a proposal forthcoming.

- **Thermal Treatment of Hazardous Waste**: Currently, generators are allowed to treat their hazardous waste to reduce the toxicity or render it non-hazardous. However, EPA excludes thermal treatment by the generator and perhaps rightly so as it pertains to combustion and incineration. However, simple evaporation of water by the use of heat of a dilute hazardous waste, commonly a wastewater, is considered thermal treatment and thus prohibited. If simple evaporation of water were allowed under conditions that would not release hazardous pollutants it could eliminate as much as 95% of the volume of such a waste stream with significant savings in transportation and treatment costs. The reduced shipping would also reduce risk to the environment. EPA has had

a positive response to this nomination and we have had one in-person meeting and two phone conferences with agency personnel in the Office of Solid Waste. Oddly enough, agency personnel pointed out that under a rather convoluted, obscure and narrow set of regulatory circumstances this could be done now. By removing these obstacles the environmental impact would remain unchanged yet allow generating manufacturers the opportunity to reduce cost from hauling gallons of water off-site. At EPA's request we have surveyed our small industry and determined that this change would result in a minimum of $140,000 savings. But much larger savings would result if a general exemption were permitted so that hundreds or thousands of other facilities could utilize this environment and cost saving procedure. We have found one printed circuit board company who estimates a savings of $40,000 per year just from one facility. We are continuing to work with the EPA on this regulation.

For the other three EPA nominations, we are disappointed that the agency has not responded to our suggestions and has not communicated with us. The EPA has committed to specific steps to address our recommendations, but in each case the dates that the EPA set to respond has passed without any action.

- **Lead Toxic Release Reporting (TRI).** In 2001 the EPA lowered the lead reporting threshold from 10,000 pounds to 100 pounds use per year under the mistaken premise that lead is a PBT, i.e. Persistent, Biocumulative and Toxic material. This swept a large number of small businesses into the TRI reporting regime, even though a large number of these had zero releases. You must report whether you have any releases or not. Mueller and other Council member companies were already reporters. However, the lowered threshold also included the elimination of the concentration *de minimis* reporting exemption. Under de minimis concentration reporting, a facility can disregard very small concentrations of lead (less than 1%) that may be contained in mixtures and other products used by the facility. The practical effect of eliminating this exemption was that we must now track extremely small concentrations and amounts of lead in miscellaneous production materials such as the wood in pallets. EPA has published an extensive listing of concentrations of lead in various materials, which lists wood containing naturally occurring lead concentrations of 20 ppm. This huge additional cost results in no environmental benefit. The EPA has delayed any action for relief until the agency's Metal Risk Assessment Plan is completed. However, we note that the Metal Risk Assessment Framework proposed by the EPA's very own Risk Assessment Forum has concluded, in preliminary documents that the PBT regime developed for classification of organic chemicals is unsuitable for assessing the risks of metals. One can only conclude that it is inappropriate to classify any metal, including lead, as a PBT. This voids EPA's original justification for lowering the reporting threshold for lead and eliminating the de minimis exemption. Yet the EPA's TRI office has

refused to take any measures to correct this mistake, and we have had no response from the agency on our nomination. One analysis of TRI reporting costs to industry, based on EPA data, estimates that from 1988 to 2001 these costs have increased from $143 million to $581 million in constant 1995 dollars. We can be sure that the misclassification of lead as a PBT, with the resultant dramatic lowering of the reporting threshold and loss of de minimis reporting, has made a significant contribution to this increased cost, with no corresponding increase in benefit.

- **Categorical Wastewater Sampling and Testing**. Current regulations require water dischargers to sample and test for certain categorical pollutants, even if they don't use those pollutant materials in their operations and there is no possibility that the pollutants are in the discharge. This obviously results in unnecessary sampling and testing. The EPA committed to proposing a final rule by June 2005. While they have also missed this deadline, we understand through your committee staff that they will shortly propose the rule change. We look forward to this proposal.

- **Spill Prevention Plans – Threshold Quantity Too Low.** This complex regulation was designed to reduce the risk of oil spills into navigable waters of the United States, a commendable goal. However, the requirements of the regulation are very burdensome, and apply to any facility that handles at least 1320 gallons (24 drums) of oil of any kind, e.g. vegetable oils and even machining coolants consisting of 5% oil content. The risks from these small facilities is very minor as compared to those processing and storing oil in large 30,000 gallon tanks or larger. The cost burden from this regulation could be reduced greatly by increasing the threshold for developing spill prevention plans to 5,000 gallons. The agency is working on many aspects of the plan, but has not committed to increasing the excessively low threshold.

In conclusion, we appreciate the Committee's attention to inefficient and unnecessary regulations that are the "silent killers" of manufacturing competitiveness. The RRKA regulatory reform nomination process initiated by OMB and OIRA during 2002 was an excellent beginning for bringing some visibility to those regulations that cost much but benefit little, and the much improved 2004 procedure and reaction from the agencies shows solid progress, but with a long path ahead if we are to achieve any regulatory reform. Although we are pleased with the dialogue that has been opened on three of our nomination, we are disappointed that the other three remain basically unexplored, with no communication with the EPA.

On behalf of Mueller Industries and the member companies of the Council, thank you for this opportunity to appear before you today.